

REMARKS

Upon entry of this paper, claims 1, 8, and 9 have been amended, no claims have been canceled, and no claims have been added as new claims. Thus, claims 1-20 are presently pending in this application. No new matter has been added.

Non-Statutory Double Patenting*Claims 1-20*

Claims 1-20 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 US Patent No. 6,673,096 (the '096 patent).

Upon entry of the present Amendment, independent claims 1 and 8 have been amended to more clearly claim that which Applicant believes to be his invention. As such, Applicant respectfully submits that independent claims 1 and 8, and all claims depending therefrom (claims 2-7 and 9-20), are no longer obvious with respect to claims 1-19 of the '096 patent. Specifically, Applicant respectfully submits that there are no claims in the '096 patent relating to the requirement of a "system for treating a condition of a patient, comprising: a radiation-emitting device . . . a massaging mechanism . . . and a controller mechanism enabled by at least one processor configured to provide emission control of the at least one radiation wavelength" (*see* amended claim 1, *see also* amended claim 8). As such, Applicant submits that the pending claims are patentably distinct from those claims of the '096 patent.

However, should this rejection be maintained, Applicant will file a terminal disclaimer in compliance with 37 CFR 1.321(c) to overcome such rejection in a timely manner.

Accordingly, withdrawal of the double patenting rejection is respectfully requested.

Claim Rejections under 35 U.S.C. §102

Claims 1, 3, 6, 8, 12, 13, and 16

Claims 1, 3, 6, 8, 12, 13, and 16 were rejected under 35 U.S.C. §102 as being anticipated by US Patent No. 5,176,130 to Kim (Kim). Independent claims 1 and 8 have been amended to more clearly identify the claimed invention. Applicant further distinguishes the claimed invention from Kim according to the following remarks.

As discussed in the Office Action, Kim “teaches a simple on/off switch for the radiation” (see OA, page 3). Applicant respectfully submits that the simple on/off switch of Kim does not anticipate the “controller mechanism enabled by at least one processor configured to provide emission control of the at least one radiation wavelength” of amended claim 1 (*see also* claim 8). Support for the additional claim language can be found throughout the application as filed, including at page 6, lines 5-24, as such, no new matter has been added.

Anticipation can only be established by a single prior art reference teaching each and every element of the claimed invention performing the identical function in the same way. Applicant respectfully submits that claimed aspects of the present invention are conspicuously absent from Kim and thus, there can be no anticipation.

In light of the above comments, applicant respectfully submits that the claims of the present invention are not anticipated by, and are therefore in condition for allowance over, the cited documents.

CONCLUSION

In view of the foregoing, it is respectfully submitted that this application is now in condition for allowance. Applicant courteously solicits allowance of the claims in the form of a Notice of Allowance. Should there be any outstanding issues of patentability following the entry of this response, a telephone interview is respectfully requested to resolve such issues.

Applicant believes no fee is due with this statement. However, if a fee is due, please charge our Deposit Account No. 12-0080, under Order No. BCW-001CN from which the undersigned is authorized to draw.

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Respectfully submitted,

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